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August 1, 2003

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Response to July 18, 2003 Letter of Pacific Telecom Inc. and  
Bell Atlantic New Zealand Holdings, Inc.; IB Docket No. 03-115

Dear Ms. Dortch:

On behalf of the Office of the Governor of the Commonwealth of the Northern Mariana Islands ("Office of the Governor"), the following responds to the July 18, 2003 letter of Pacific Telecom Inc. ("PTI") and Bell Atlantic New Zealand Holdings, Inc. ("BANZHI") (collectively referred to as "Joint Applicants").

In their July 18, 2003 letter, the Joint Applicants claim that the July 2, 2003 Reply of the Office of the Governor ("Reply") to the Joint Opposition of Pacific Telecom, Inc. and Bell Atlantic New Zealand Holdings, Inc. dated June 24, 2003 ("Joint Opposition") is not authorized under the Commission's rules. However, as the Reply itself clearly indicates, it is an authorized reply under Section 1.45(c) of the rules.<sup>1</sup> In point of fact, it is the Joint Applicants -- not the Office of the Governor -- whose submission is unauthorized as they fail to cite any authority or legal basis whatsoever for their July 18, 2003 letter.

**A. If Not Denied, The Applications Should be Designated  
for Evidentiary Hearing as a Matter of Right**

The Joint Applicants are correct that the language in Section 1.764(b) of the Commission's rules authorizes a hearing to be held at the request of a Governor. The Joint Applicants are also correct that Section 1.764(b) of the Commission's rules applies to applications to discontinue, reduce or impair service. While it is likely that the proposed transfer

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<sup>1</sup> See Reply at 1 (citing 47 U.S.C. § 1.45(c)).

of control would result in a reduction or impairment of service<sup>2</sup>, this issue does not need to be decided in order to determine that the Office of the Governor is afforded the right to a hearing upon request under the Commission's rules. Language identical to that found in Section 1.764(b) of the Commission's rules authorizing a hearing at the request of a Governor is found in Section 1.763(b) of the Commission's rules as well. Commission precedent clearly establishes that Section 1.763(b) applies to applications for transfers of control.<sup>3</sup> Significantly, both Section 1.763(b) and Section 1.764(b) of the Commission's rules as well as Section 214(b) of the Communications Act of 1934, as amended ("Act"), evince a policy of extending special consideration to the views of Governors. Clearly, the Office of the Governor is entitled to a hearing as a matter of right if the Applications are not denied.

**B. The Office of the Governor has Established a *Prima Facie* Showing that Grant of the Applications is not in the Public Interest**

As the Office of the Governor has clearly established, the Applicants have failed to meet their burden, under Sections 214(a) and 310(d) of the Act, of demonstrating that the proposed transfer of control serves the public interest, convenience, and necessity.<sup>4</sup> Thus, their Applications and petition for declaratory ruling under Section 310(b)(4) should be denied without a hearing.

Furthermore, the Joint Applicants are incorrect that the Office of the Governor has failed to establish a *prima facie* showing that grant of the applications would not serve the public interest.<sup>5</sup> Under the FCC's two-part test for assessing whether a hearing should be granted to a party filing a petition to deny under Section 309(d) of the Act, the Commission must first decide whether or not the facts offered in the petition to deny, *if true*, would demonstrate that a grant of

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<sup>2</sup> See Petition of the Office of the Governor to Deny, or, In the Alternative, To Designate For Hearing at 33, IB Docket No. 03-115 (June 9, 2003) ("Petition to Deny") (showing that the proposed transaction would result in the loss of products and services).

<sup>3</sup> See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, *Report and Order*, 14 FCC Rcd 11364 n.31 (June 30, 1999) (Ness, S., Furtchgott-Roth, H., Powell, M., dissenting in part).

<sup>4</sup> See *id.*; see also 47 U.S.C. § 310(d).

<sup>5</sup> The 275 word *Marianas Variety* editorial offered in support of the Joint Applicant's position that the Office of the Governor has failed to establish a *prima facie* case for denial has no relevance here. See letter from Peter D. Shields and Jennifer D. Hardin, Attorneys for BANZHI and Kenneth D. Patrich and Timothy J. Cooney, Attorneys for PTI, to Marlene H. Dortch, Secretary, FCC, dated July 18, 2003, Attachment A. In order to determine whether the Office of the Governor has met its burden to establish a *prima facie* case, the facts alleged in its Petition to Deny are assumed to be true. See *In re JOSE FRANCIS; Petition for Reconsideration of License Grant for Station WPUR492, Pleasant Peak, California and MATHEWS THOMAS; Petition for Reconsideration of License Grant for Station WPUT210, Pleasant Peak, California, Order on Reconsideration*, 17 FCC Rcd 21136 (Oct. 23, 2002). In any event, the Governor, a publicly elected official, is clearly the party best positioned to speak as to what is in the public interest of the CNMI, not the Joint Applicants, despite their arrogant implication to the contrary.

the application would be inconsistent with the public interest.<sup>6</sup> In the instant case, if the lack of financial and technical qualification of PTI; the serious national security and public safety concerns presented by a foreign corporation controlling monopoly telecommunications facilities on a U.S. commonwealth distantly situated in the Pacific rim; the potential the transaction has to undermine rate integration in the Commonwealth; and the intentional misrepresentations of PTI are assumed to be true, there can be no question that the transaction would result in serious harm to the public interest.<sup>7</sup> Thus, the Office of the Governor has clearly established a *prima facie* case.

Under the second prong of the test, the Commission must decide whether, when all alleged facts are taken together, a substantial and material question of *fact*<sup>8</sup> exists such that an evidentiary hearing would be appropriate.<sup>9</sup> In the instant case, substantial and material questions of fact exist with respect to each of the issues covered in the preceding paragraph.

Additionally, the Joint Applicants claim that the Office of the Governor has failed to support its allegations with specific facts. To the contrary, the Office of the Governor has supplied a detailed affidavit with its Petition to Deny.<sup>10</sup> Furthermore, a number of important facts in this matter are either bolstered by press reports of which the Commission may take official notice<sup>11</sup>, or occurred on the record in the prior proceeding in IB Docket No. 02-111.

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<sup>6</sup> See GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, *Memorandum Opinion and Order*, 15 FCC Rcd 14032, para. 435 (June 20, 2000); see also In re JOSE FRANCIS; Petition for Reconsideration of License Grant for Station WPUR492, Pleasant Peak, California and MATHEWS THOMAS; Petition for Reconsideration of License Grant for Station WPUT210, Pleasant Peak, California, *Order on Reconsideration*, 17 FCC Rcd 21136 (Oct 23, 2002).

<sup>7</sup> See Petition to Deny.

<sup>8</sup> The purpose of an evidentiary hearing is to explore *questions of fact*. Because denial of the Applications is warranted on legal and economic grounds, the Commission should deny the Applications without proceeding to a hearing. See *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1497 (1995).

<sup>9</sup> See In the Matter of Shareholders of the Ackerley Group, Inc. (Transferor) and Clear Channel Communications, Inc. (Transferee), *Memorandum Opinion and Order*, 17 FCC Rcd 10828 (May 24, 2002); see also *Astroline Communications Co Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

<sup>10</sup> See Petition to Deny, Exhibit A.

<sup>11</sup> See 47 U.S.C. 309(d).

**C. Intentional Misrepresentation and Lack of Candor**

The Joint Applicants continue to take the legally untenable position that PTI is somehow not responsible for the intentional, material misrepresentations of its officers.<sup>12</sup> The Joint Opposition, however, offers no Commission precedent in support of such assertions. As its previous submissions demonstrate, the Office of the Governor has clearly established that the intentional and material misrepresentations committed in the previous docket are attributable to PTI under the Commission's rules.

As the record herein demonstrates, the Applications should be denied or, at a minimum, designated for hearing.

Respectfully submitted,

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/s/  
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cc: Attached Service List

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<sup>12</sup> See Joint Opposition at 3.

## CERTIFICATE OF SERVICE

I, Sandra Safro, a legal assistant with the Law Offices of Thomas K. Crowe, P.C., certify that on August 1, 2003, a copy of the foregoing *Response to July 18, 2003 Letter of Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc.; IB Docket No. 03-115*, was served by first class United States mail, postage prepaid upon the parties listed below.

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